

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

LONNIE GUNN, #644474

§

VS.

§

CIVIL ACTION NO. 6:08cv321

MICHAEL SIZEMORE, ET AL.

§

ORDER OF DISMISSAL

The above-entitled and numbered civil action was heretofore referred to United States Magistrate Judge Judith K. Guthrie, who issued a Report and Recommendation concluding that the complaint should be dismissed pursuant to the “three strikes” provision of 28 U.S.C. § 1915(g). The Plaintiff has filed objections.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by the Plaintiff to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections of the Plaintiff are without merit.

The Report and Recommendation noted the Plaintiff’s history of abuse of court as discussed by the Fifth Circuit in *Gunn v. S.N.C.*, 265 Fed. Appx. 340 (5th Cir. 2008). The Fifth Circuit imposed the “three strikes” bar in accordance with 28 U.S.C. § 1915(g). Consequently, the Plaintiff may not proceed *in forma pauperis* unless he was “under imminent danger of serious physical injury” at the time he filed the lawsuit. *See Banos v. O’Guin*, 144 F.3d 883, 884-85 (5th Cir. 1998).

The Plaintiff's objections that alleged that he has been the victim of harassment and threats failed to show that he was under imminent danger of serious physical injury. The objections lack merit. Therefore the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the complaint is **DISMISSED** with prejudice for purposes of *in forma pauperis* proceedings pursuant to 28 U.S.C. § 1915(g). It is further

ORDERED that the Plaintiff's motion to proceed *in forma pauperis* (docket entry #3) is **DENIED**. The Plaintiff may resume his lawsuit if he pays the entire filing fee of \$350 within thirty days from the entry of this order. *See Carson v. Johnson*, 112 F.3d at 823. It is finally

ORDERED that all motions not previously ruled on are hereby **DENIED**.

So ORDERED and SIGNED this 24th day of September, 2008.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**